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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of CHRISTOPHER and  
ERIN TITUS.

B232398

(Los Angeles County  
Super. Ct. No. LD047643)

CHRISTOPHER TITUS,

Appellant,

v.

ERIN TITUS,

Respondent.

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Frederick C. Shaller, Judge. Affirmed.

Christopher Titus, in pro. per., for Appellant.

Erin Titus, in pro. per., for Respondent.

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## INTRODUCTION

Appellant Christopher Titus appeals from a judgment on reserved issues entered after dissolution of his marriage to respondent Erin Titus. He contends that the trial court erred by not considering new evidence he submitted in support of his post-trial motion for reconsideration, and abused its discretion by making numerous arbitrary and inconsistent rulings. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. *Judgment of Dissolution*

Christopher and Erin Titus were married in 1991 and have two minor children. They separated on June 4, 2006, and Christopher filed a petition for dissolution of marriage on June 7, 2006.<sup>1</sup> After very contentious proceedings during which both parties were represented by counsel, the trial court entered judgment as to status only on November 2, 2009. The parties entered into marital settlement agreements on June 4, 2010 and August 13, 2010. These agreements addressed property, education, custody and visitation issues.

### B. *Trial on Reserved Issues*

The case was set for trial to resolve certain issues, including child and spousal support and division of property. At the time, the parties had joint legal and physical custody of the children. Christopher was paying Erin child and spousal support. The parties had sold some of their community property and divided the proceeds between them or used the proceeds to pay attorneys' fees and costs.

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<sup>1</sup> “As is customary in family law cases where the parties shared the same surname, we refer to them by their first names for ease of reference, meaning no disrespect.” (*In re Marriage of Herr* (2009) 174 Cal.App.4th 1463, 1466, fn. 1.)

The case went to trial on the reserved issues on September 8, 2010. Christopher was represented by counsel and Erin represented herself, after her attorney “substituted out of the case on the eve of trial.” After a six-day trial, the trial court resolved all issues other than attorneys’ fees. On September 28, 2010 the trial court issued a statement of decision.

On October 20, 2010 Christopher, still represented by counsel, filed an objection to the findings in the statement of decision and a request for inclusion of alternate language. On November 10, 2010 Christopher, now self-represented, filed a supplemental objection to the findings and a request for inclusion of alternate findings and language.

### C. *Attorneys’ Fees*

The parties and their former attorneys stipulated that the trial court would resolve the issue of attorneys’ fees based on the declarations of Erin’s former attorneys and Christopher’s response, pursuant to *In re Marriage of Borson* (1974) 37 Cal.App.3d 632.<sup>2</sup> On December 1, 2010 the trial court issued its ruling on the attorneys’ fees issue.

The court first reviewed the proceedings with respect to the claims for attorneys’ fees, finding that some but not all of the time spent and fees incurred were reasonable and necessary. The court then reviewed some of the relevant factors in making an attorneys’ fees award. The trial court stated: “This case has been a heavily and overly contested matter particularly relating to the issues of domestic violence, child custody and visitation, and support. The case was characterized by such animosity and lack of trust and communication between the parties and attorneys that many court hearings were

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<sup>2</sup> A *Borson* motion “allows a discharged attorney to pursue a request for direct fee payment from the former client’s spouse if the request is expressly or impliedly authorized by the former client.” (*In re Marriage of Erickson & Simpson* (2006) 141 Cal.App.4th 707, 709.)

necessary for rulings on these issues. [¶] Both parties added to the amount of attorney's fees by substituting out counsel requiring duplication of efforts and fees.

“Furthermore, when the parties obtained orders or entered into stipulations, they often failed to abide by those agreements and orders which resulted in numerous confusing and contradictory orders and complex issues remaining for enforcement, re-litigation, and trial. [¶] The parties pursued issues in discovery and trial that caused the expenditure of significant attorney's fees that bore no relationship to the ultimate result. Many of the positions taken by the parties in the case were unreasonable and unsupportable by statutory or case law. This is particularly true in the case of [Christopher] whose multiple claims of breach of fiduciary duty and requests for reimbursements were in some instances bordering on frivolous.”

In making the attorneys' fees award, the trial court considered the support factors in Family Code section 4320 pursuant to *Alan S. v. Superior Court* (2009) 172 Cal.App.4th 238. The court noted that the parties had been married for 15 years and “had achieved a marital lifestyle in the upper 1/3 of all persons in the United States,” living on \$20,000 to \$30,000 per month. Their income had decreased since separation because Christopher had decreased the amount of time he was working in order to parent the children 50 percent of the time, and had experienced a loss of earning capacity due to his declining popularity as a standup comedian. The court found that Erin was capable of working but was not doing so. While she had marketable skills, she would need retraining to update those skills in order to obtain employment.

The court further noted that Christopher had lost most of his savings, and Erin had lost all of her savings “due to this divorce which has been litigated beyond any reason. [Christopher's] lifestyle has taken a severe downturn such that he is now spending more on serving the debt he owes than paying on his basic needs.” His lifestyle was now in the middle 1/3 of all persons in the United States, while Erin's lifestyle had fallen to the

bottom 1/3 of all persons in the United States. Thus, Family Code section 4320, subdivision (c),<sup>3</sup> supported an award of attorneys' fees to Erin.

In reviewing the parties' obligations, the trial court noted that Erin still owed over \$350,000 in attorneys' fees, in addition to "a multitude of other expenses related to the case," and was planning on filing for bankruptcy protection after the conclusion of the case. Christopher had already paid over \$177,000 in attorneys' fees and still owed about \$16,000. Therefore, the court concluded, the parties' obligations supported an award of attorneys' fees to Erin.

The court also noted there was a "dispute as to whether there is a history of domestic violence between the parties," but found that Erin had proved by a preponderance of the evidence that she was a victim of domestic violence during the parties' marriage. Under Family Code section 4320, subdivision (i), this factor supported an award of attorneys' fees to Erin.

The trial court also noted that Erin had the obligation to become self-supporting under Family Code section 4320, subdivision (l), and had "stubbornly refused to take responsibility for her financial future by failing to obtain remunerative employment." This factor weighed against an award of attorneys' fees.

Based on all of the relevant factors, the trial court ordered Christopher to pay the additional sum of \$40,000 to Erin's attorneys. The trial court explained that the most important factors supporting the award were that Erin lacked the ability to pay attorneys' fees, that Christopher "litigated almost every contested issue thereby greatly increasing the amount of attorney's fees expended by both sides, that when [Christopher] was ordered to pay attorneys fees by order or stipulation he failed to fully live up to his agreements or the orders," and that Christopher "ended up with nearly all of the assets in the marital community in the [marital settlement agreement] and has by that fact and his

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<sup>3</sup> This factor includes "[t]he ability of the supporting party to pay spousal support, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living."

ongoing income the ability to pay this amount of fees.” The court also noted that for various reasons the parties and their attorneys needlessly complicated and overlitigated the case.

The court also addressed Christopher’s supplemental objections to the prior statement of decision. The trial court sustained some of Christopher’s objections, either in whole or in part, and modified portions of the statement of decision. The court issued a 74-page minute order containing its rulings, including a modified statement of decision.

D. *Motion for Reconsideration*

On December 10, 2010 Christopher, still self-represented, filed an approximately 350-page motion for reconsideration, seeking relief from the December 1, 2010 order, pursuant to Code of Civil Procedure sections 1008 and 473, Family Code sections 770 and 2032, and the doctrine of unclean hands. The motion was supported by a lengthy declaration by Christopher, declarations from his friends and associates, and the previous objections to the statement of decision along with supporting evidence.

On January 31, 2011 the trial court granted the motion for reconsideration in part. On February 1, 2011 the trial court issued a final 63-page statement of decision, which included a final ruling on the attorneys’ fees issue.

On February 10, 2011 Christopher filed supplemental objections and request for inclusion of alternative findings and language. The trial court overruled most of Christopher’s objections, sustained some in whole or in part, and modified the statement of decision.

E. *Judgment*

On March 2, 2011 the trial court entered judgment on the reserved issues. The judgment incorporated the June 4, 2010 marital settlement agreement regarding some property issues and the children’s education. The trial court resolved certain claims regarding arrears and overpayment of child and spousal support payments for 2007 through 2009, and retained jurisdiction to resolve any support claims for 2010 and 2011.

The court also resolved numerous other claims, mostly by Christopher, for breach of fiduciary duty, misappropriation of property, and reimbursement, and addressed issues regarding child and spousal support. Finally, the court confirmed its prior order requiring Christopher to pay \$40,000 in attorneys' fees.

## DISCUSSION

### A. *Standard of Review*

We presume that the record contains evidence to sustain every finding of fact and that the judgment is correct. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133 ["A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness."].) We also presume that the trial court "'performed its duties in a regular and correct manner absent a clear showing to the contrary.'" (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 494.)

"It is the appellant's burden to affirmatively demonstrate error" by furnishing an adequate record. (*In re Marriage of Gray* (2002) 103 Cal.App.4th 974, 978; see *In re Marriage of Fink* (1979) 25 Cal.3d 877, 887 ["It is incumbent upon appellants to state fully, with transcript references, the evidence which is claimed to be insufficient to support the findings."].) "An appellant contending some particular finding is not supported must set forth in his or her brief a summary of the material evidence upon that issue, and, if that is not done, the error is waived." (*In re Marriage of Rothrock* (2008) 159 Cal.App.4th 223, 230; see *In re Marriage of Schroeder* (1987) 192 Cal.App.3d 1154, 1164.) In order to meet this burden, an appellant must provide citations to evidence in the record, and relevant authority and argument that demonstrates reversible error. (*In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 672-673, fn. 3; see Cal. Rules of Court, rule 8.204(a)(1).)

Where an appellant challenges the trial court's factual findings, we defer to the trial court determinations and "'do not reweigh evidence or reassess the credibility of

witnesses.’’ ( *In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1531; see *In re Marriage of Calcaterra & Badakhsh* (2005) 132 Cal.App.4th 28, 34.) “Reading a typed reporter’s transcript does not enable us to view the witnesses, determine credibility or determine which conflicting evidence is to be given greater weight.” ( *In re Marriage of Smith, supra*, 225 Cal.App.3d at p. 494.)

To determine whether substantial evidence supports the trial court’s findings “we examine the evidence in the light most favorable to the prevailing party and give that party the benefit of every reasonable inference.” ( *In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1151; see *In re Marriage of Mix* (1975) 14 Cal.3d 604, 614.) If the evidence supports more than one inference, we may not substitute our inference for that of the trial court. ( *Veguez v. Governing Bd. of the Long Beach Unified School Dist.* (2005) 127 Cal.App.4th 406, 422; see *In re Marriage of Connolly* (1979) 23 Cal.3d 590, 598 [“[W]hen two or more inferences can reasonably be deduced from the facts, a reviewing court lacks power to substitute its deductions for those of the trial court.”].)

Where an appellant challenges the trial court’s exercise of its discretion, we will find an abuse of discretion only where the trial court’s action is arbitrary or capricious, or it exceeds the bounds of all reason under the circumstances. ( *Maughan v. Google Technology, Inc.* (2006) 143 Cal.App.4th 1242, 1249-1250.) “Although precise definition is difficult, it is generally accepted that the appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered.” ( *In re Marriage of Connolly, supra*, 23 Cal.3d at p. 598.) We review orders for spousal support and attorneys’ fees for abuse of discretion, and “[i]n the absence of a clear showing of abuse” such orders “will not be disturbed on appeal.” ( *In re Marriage of Sullivan* (1984) 37 Cal.3d 762, 768-769; *In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 283; see *In re Marriage of Cryer* (2011) 198 Cal.App.4th 1039, 1054 [“An award of fees and costs in a dissolution or related family law proceeding is a matter left to the trial court’s sound discretion.”].)

B. *Motion for Reconsideration*

Christopher contends he filed a proper motion for reconsideration under Code of Civil Procedure section 1008, asking the trial court “to reconsider its prior decisions based upon new evidence submitted and clarifying copies of evidence previously presented.” Christopher claims that the trial court abused its discretion by considering only the “evidence presented at trial” and “clearer copies” of documents previously submitted at trial, and by refusing to consider the new evidence Christopher presented in his motion for reconsideration. We conclude that in granting the motion for reconsideration in part, the trial court properly limited its reconsideration to evidence submitted at the trial and clearer copies of documents already in evidence.

In ruling on Christopher’s motion for reconsideration the trial court stated it was not going to reopen the case, but what it “was going to do was to look at the evidence that was already presented and decide whether certain objections, which were previously raised, should cause [the court] to change [its] tentative or statement of decision . . . .” The trial court stated that the only possible “new” evidence it would consider was “cleaner copies of checks” that had already been received into evidence at the trial. The court explained to Christopher that “the law does not permit me to give a second bite at the apple once the evidence was closed because now you know what my ruling is and now you can look harder for the stuff.”

A motion for reconsideration under Code of Civil Procedure section 1008 must be “based upon new or different facts, circumstances, or law.” The party seeking reconsideration must show not only new or different facts, circumstances or law, but must also provide a satisfactory explanation for the failure to produce the new evidence earlier. (*California Correctional Peace Officers Assn. v. Virga* (2010) 181 Cal.App.4th 30, 46, fn. 15; *In re Marriage of Herr, supra*, 174 Cal.App.4th at p. 1468.) In addition to its authority under Code of Civil Procedure section 1008, the trial court retains the ability to reconsider its interim rulings on its own motion and to change those rulings at any time prior to entry of judgment. (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1107; *In re Marriage of Barthold* (2008) 158 Cal.App.4th 1301, 1303.) This “inherent authority to

correct its errors applies even when the trial court was prompted to reconsider its prior ruling by a motion filed in violation of section 1008.” (*In re Marriage of Barthold, supra*, at pp. 1303-1304; see *Nieto v. Blue Shield of California Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 73-74.) However, “in order to grant reconsideration on its own motion, the trial court must conclude that its earlier ruling was wrong, and change that ruling *based on the evidence originally submitted*,” and the parties may not “obtain reconsideration relying on evidence that could and should have been, but was not, presented to the court in connection with the original motion.” (*In re Marriage of Barthold, supra*, at p. 1314.)

As the trial court recognized, the fact that Christopher may have presented new or different facts did not justify reconsideration. Christopher did not provide an adequate explanation for his failure to present the allegedly new facts at trial. Therefore, the trial court properly declined to reconsider its prior rulings based on new or different facts Christopher presented with his motion for reconsideration, and properly limited its review on reconsideration to evidence and better copies of exhibits submitted at trial. (See *In re Marriage of Barthold, supra*, 158 Cal.App.4th at p. 1314.)

### C. *Alleged Erroneous Rulings*

#### 1. **Inconsistent Application of Payments**

Christopher contends that the trial court abused its discretion by refusing to consider evidence of certain support and other payments that he claims he made, which according to Christopher demonstrates “a hurried and purely arbitrary approach in rendering its decision.” Christopher, however, submitted evidence of these payments with his motion for reconsideration. As discussed above, the trial court properly refused to consider this evidence.

Christopher also points to discrepancies between the February 1, 2011 statement of decision and the March 2, 2011 judgment. Any such discrepancies, however, would not justify reversal. A trial court “‘is not bound by its statement of intended decision and may enter a wholly different judgment than that announced.’ [Citation.] ‘Neither an oral

expression nor a written opinion can restrict the power of the judge to declare his [or her] final conclusion in [the judgment]. [Citation.] The [judgment] constitute[s] the final decision of the court and an oral or written opinion cannot be resorted to for the purpose of impeaching or gainsaying the . . . judgment. [Citation.] . . . ’ [Citation.]” (*In re Marriage of Ditto* (1988) 206 Cal.App.3d 643, 646-647, italics omitted; see *In re Marriage of Left* (2012) 208 Cal.App.4th 1137, 1153-1154.) The trial court is free “to make . . . corrections, additions, or deletions it deems necessary or appropriate” to the statement of decision before issuing its final judgment. (*In re Marriage of Ditto, supra*, at p. 647.)

Moreover, if Christopher believed that the judgment did not reflect the intention of the court as expressed in the statement of decision, he could have asked the trial court to correct the judgment. (*Aspen Internat. Capital Corp. v. Marsch* (1991) 235 Cal.App.3d 1199, 1204; see *In re Marriage of Sheridan* (1983) 140 Cal.App.3d 742, 746 [“Regardless of the lapse of time or the finality of judgment a court may, upon motion of a party or upon its own motion, correct a clerical mistake in its judgment, whether the mistake was made by the clerk, counsel or the court itself.”].) Where the judgment does not reflect the court’s intention, the court may correct it as a clerical error at any time. (*In re Marriage of Kaufman* (1980) 101 Cal.App.3d 147, 151; see *In re Candelario* (1970) 3 Cal.3d 702, 705 [“[A] court has the inherent power to correct clerical errors in its records so as to make these records reflect the true facts.”].) We decline on appeal to review the entire record of payments to check the trial court’s mathematical calculations absent a record that actual error was demonstrated to the trial court.

## **2. Favorable Treatment Toward Erin**

Christopher claims the trial court treated Erin more favorably than it treated him. He invites us to review the record to see that the trial court “showed preferential treatment to [Erin] throughout the proceedings,” and “to observe the impact this disparate treatment had on the decisions reached in his case in all areas.” This we decline to do. As explained above, it is Christopher’s burden to demonstrate error; he may not place

that burden on the court. (See *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 [““The appellate court is not required to search the record on its own seeking error.””]; see also *Welch v. State Teachers’ Retirement System* (2012) 203 Cal.App.4th 1, 20 [“An assertion of error that is not supported by authority or analysis requires no discussion.”].)

The portions of the record Christopher cites in support of his claim do not demonstrate that the trial court gave Erin favorable treatment. At the January 27, 2011 hearing on Christopher’s motion for reconsideration, the trial court told Christopher that it wanted to give him a “fair result.” The court stated that the parties’ poor presentation of the evidence during the trial and the way they litigated the case made it very difficult for the court, and that the court wanted “a little bit more time to try to work on it than I ordinarily would.”<sup>4</sup> The trial court told Christopher, “I need to look at it again and I will and see if I need to change any of the rulings,” and “I feel that you deserve one last look at this thing to make sure that I’ve got it right and I’m going to undertake to do that.” The court told Christopher that it was not going to reopen the case “to have a retrial,” but stated: “I am concerned enough about some of the allegations that are made of evidence that exists that I may have either misinterpreted or not seen. There are discrepancies between the orders that were previously made and my ultimate ruling which I need to fix. I agree with that.”

At one point in the hearing, the trial court made a comment to which Christopher points as an example of how Erin received preferential treatment: “Now, you [Christopher] were dealing with a lot of issues and [Erin] came in late with a lot of documents which I permitted because she was self-represented. I considered a lot of things that may have made the evidence turn a little bit against [Christopher] and you may have had some degree of surprise . . . .” The trial court, however, went on to finish

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<sup>4</sup> The trial court actually faulted the parties’ former attorneys more than the parties. The court stated, “it’s a shame that you all paid so much money on attorney’s fees and costs in this case because, really, I think you were disserved, in most cases, by the representation.”

the sentence quoted by Christopher by stating “and that’s another reason I want to take another look at it.” In other words, the court wanted to make sure Christopher had not been treated unfairly. Contrary to Christopher’s argument, the trial court went out of its way to make sure that neither side received preferential treatment. Indeed, Christopher concedes that on reconsideration the trial court reversed a \$168,000 charge against Christopher and gave him “a support overpayment credit.” Christopher has failed to demonstrate any unfairness in the way the trial court handled the case.

### **3. Failure to Consider New Evidence Regarding Abuse**

Some of the new pieces of evidence that Christopher sought to present in his motion for reconsideration were witness declarations on the issue of domestic violence. In refusing to consider this evidence, the trial court appropriately noted that “nobody saw fit to bring these people into court.” As stated above, in order for the trial court to consider the new evidence, Christopher was required to provide a satisfactory explanation for his failure to produce the evidence earlier. This he failed to do. In the absence of a satisfactory explanation for failing to call at trial the witnesses who provided the declarations, the trial court properly refused to consider the new evidence Christopher submitted in connection with this motion for reconsideration.

### **4. False Abuse Claims**

Christopher argues that Erin lied during the trial and falsely claimed that he abused her. Counsel for Christopher challenged Erin’s testimony on cross-examination. To the extent Christopher attempted to submit additional evidence to prove the falsity of Erin’s testimony in his motion for reconsideration, the trial court properly refused to consider it.

What Christopher ultimately claims is that in spite of the evidence he presented that he did not abuse Erin, “and without any evidence presented by [Erin], the Court allowed said false claims of abuse to stand, and found [Christopher] to be an ‘angry’ person without one shred of evidence. [Erin] produced not one witness, not one photo,

not one doctor's report, and not one declaration to support her false claims of abuse. . . . This is extremely prejudicial to [Christopher] and, in fact, defames him in the community in which he resides. . . . [¶] [Christopher] requests that any reference to abuse should be stricken from the Court record." (Emphasis omitted.)

On appeal we cannot strike references to abuse from the record. Our role is to review the trial court's findings to determine whether they are supported by substantial evidence. As stated above, we defer to the trial court's determination of credibility, we do not reweigh the evidence, we view the evidence in the light most favorable to the prevailing party, and we resolve all evidentiary conflicts and indulge all reasonable inferences in support of the findings. (See *In re Marriage of Mix*, *supra*, 14 Cal.3d at p. 614.) We do not strike specific portions of the trial court record.

In its statement of decision the trial court found that there was "a dispute as to whether there is a history of domestic violence between the parties." The court found, however, by "a preponderance of the evidence that [Erin] was a victim of spousal abuse during the marriage. It is evident from the demeanor of [Christopher] at trial that [Erin's] contentions about [Christopher's] short temper are true. There is evidence that [Erin] lived in fear of her husband's temper as reflected by her making false charges to the authorities . . . . The incidents in Bear Valley of abuse around the time of the filing of the case were never adjudicated prior to this trial, but nonetheless appear to be substantiated by [Erin's] account of the events, and [Christopher's] acceptance of the responsibility for these actions is reflected by his agreement to attend anger management and counseling."<sup>5</sup>

Erin's testimony regarding abuse, even if contradicted by Christopher's testimony and unsupported by any documentary or photographic evidence, is sufficient to support the trial court's finding. The testimony of one witness, even an interested party, is sufficient to prove a fact. (*In re Marriage of Mix*, *supra*, 14 Cal.3d at p. 614; *Sabbah v.*

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<sup>5</sup> The trial court noted at the January 27, 2011 hearing on the motion for reconsideration that Christopher was interrupting Erin, which gave the trial court the impression that he was still angry and "trying to tell her to shut up."

*Sabbah* (2007) 151 Cal.App.4th 818, 823; see *In re Marriage of Slivka* (1986) 183 Cal.App.3d 159, 163 [““The testimony of a witness, even the party [herself], may be sufficient” to support a judgment.”].) “Similarly, the testimony of a witness in derogation of the judgment may not be credited on appeal simply because it contradicts the plaintiff’s evidence, regardless how ‘overwhelming’ it is.” (*Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1204; see *Fuentes v. AutoZone, Inc.* (2011) 200 Cal.App.4th 1221, 1233.)

The trial court believed Erin’s testimony, and we are not free to reject it because Christopher claims on appeal that Erin filed false charges, did not properly document the abuse, or testified falsely in certain respects. “““To warrant the rejection of the statements given by a witness who has been believed by a trial court, there must exist either a physical impossibility that they are true, or their falsity must be apparent without resorting to inferences or deductions. [Citation.] Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citations.]””” (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1149; *Evje v. City Title Ins. Co.* (1953) 120 Cal.App.2d 488, 492.) We may reject evidence accepted by the trial court only if it is “““so inherently improbable and impossible of belief as in effect to constitute no evidence at all””” (*People v. Maxwell* (1979) 94 Cal.App.3d 562, 577), i.e., if it is “““unbelievable *per se*,””” physically impossible or “““wholly unacceptable to reasonable minds””” (*In re S.A., supra*, at p. 492). We do not disturb the trial court’s finding that Erin “was a victim of spousal abuse during the marriage.”

## **5. Denial of Motion for Sanctions**

Christopher challenges the trial court’s denial of his request to sanction Erin for failure to comply with an order requiring her to attend a mandatory settlement conference. Christopher “feels this further demonstrates the inconsistency of the trial [c]ourt,” and he requests that we sanction Erin. In the absence of any further explanation

of, or authority to support, this argument, we do not consider it. (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830; see *Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 366, fn. 2.)

## **6. Failure to Credit Two \$2,000 Payments**

In its December 1, 2010 statement of decision the trial court ordered Christopher to pay an additional \$2,000 per month for child and spousal support arrears. In its February 1, 2011 statement of decision the trial court stated: “The court reserves issuing an order regarding arrears since there is currently insufficient information for the court to determine support arrears for the year 2010 and there is a small overpayment of support by [Christopher] up through the end of 2009.” In the judgment the trial court calculated the arrears for 2007, 2008 and 2009, credited Christopher with the overpayment, and reserved jurisdiction to calculate arrears or overpayment for 2010 and 2011.

Christopher states that he made two \$2,000 payments toward arrears in December 2010 and January 2011, but the trial court failed to credit him with these payments. Christopher, however, does not provide us with citations to the record that would enable us to determine that he made these payments but did not receive appropriate credit for them. Therefore, he has not met his burden of demonstrating error. (See *In re Marriage of Nichols, supra*, 27 Cal.App.4th at pp. 672-673, fn. 3; see also Cal. Rules of Court, rule 8.204(a)(1).)

## **7. Assignment of a Payment Plan**

Christopher argues that the trial court erred by ordering him to pay the money he owed Erin pursuant to a payment plan, but not ordering Erin to pay the money she owes him (\$140,000) pursuant to a payment plan. Christopher, however, did not file a motion or written request in the trial court for an order requiring Erin to pay him pursuant to a payment plan.

“As a general rule, issues not properly raised at trial will not be considered on appeal.” (*In re Marriage of Olson* (1993) 14 Cal.App.4th 1, 15; see *Cinnamon Square*

*Shopping Center v. Meadowlark Enterprises* (1994) 24 Cal.App.4th 1837, 1844 [“As a general rule an appellate court will consider only such points as were raised in the trial court, and this rule precludes a party from asserting, on appeal, claims to relief not asserted or asked for in the court below.”]; *In re Marriage of Ostler & Smith* (1990) 223 Cal.App.3d 33, 52-53 [declining to consider claim that trial court’s child support award exceeded county guidelines because appellant did not raise the issue in the trial court].) While “[a]n appellate court may in its discretion consider an issue not properly raised in the trial court if the issue presents a pure question of law on undisputed evidence” (*CNA Casualty of California v. Seaboard Surety Co.* (1986) 176 Cal.App.3d 598, 618), “it is not appropriate to do so by exercising a discretion and making factual decisions to which the trial court has never addressed itself” (*Rutan v. Summit Sports, Inc.* (1985) 173 Cal.App.3d 965, 974). In the absence of any indication that Christopher properly raised this issue in the trial court, other than by making an offhand comment during a hearing on a different motion, we decline to address this issue on appeal.<sup>6</sup>

## **8. Requirement that Christopher Pay Erin’s Attorneys’ Fees**

Christopher contends that the trial court abused its discretion in ordering him to pay Erin’s attorneys’ fees. Christopher claims he previously paid money to Erin that she

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<sup>6</sup> Christopher mentioned at the hearing on his motion for reconsideration that he received “a payment schedule plus an interest penalty” for the money he owed Erin, and stated that he believed “it violates my 14th Amendment rights of equal protection of the law to not have any percentage of interest paid for the money she owes me back, which the court agrees to. I would like you guys to look at that, if that’s okay.” This isolated comment, unaccompanied by any written motion or filing, does not preserve the issue for appeal. Moreover, to the extent Christopher is complaining about not receiving interest on the money Erin owes him, Christopher forgets that without an order allowing Erin to pay him back in payments over time, the entire amount she owes him is due and earning interest at the statutory rate of 10 percent. (See Code Civ. Proc., §§ 680.270, 685.010; *In re Marriage of Wilcox* (2004) 124 Cal.App.4th 492, 498-499 [order requiring spouse to pay the other spouse \$260,000 in community property equalization was a money judgment under Code of Civil Procedure section 680.270].)

was supposed to use for paying her attorneys' fees, but "she deliberately failed to do so for six years." Thus, Christopher argues the trial court essentially made him pay Erin's attorneys' fees twice. In support of this claim Christopher cites 33 pages of the January 27, 2010 tentative ruling. This is insufficient to meet his burden of directing us to the relevant evidence and rulings in the record that demonstrate reversible error. (See *Walsh v. Board of Administration* (1992) 4 Cal.App.4th 682, 709 [appellant "has the burden not only to point to evidence which might support his claim, but to show that the evidence compelled a finding in his favor"].)

Christopher also argues, in essence, that it is inequitable to require him to pay Erin's attorneys' fees, when Erin did not pay her attorneys' fees with money Christopher gave her, and when Erin refuses to get a job. He requests that we order the trial court to make "a more equitable disposition of attorney fees," preferably an order that the parties pay their own fees.

In a marital dissolution action, the "decisions whether and in what amount to award attorney's fees and costs are within the broad discretion of the trial court. The court's decision will not be reversed on appeal unless a clear showing of abuse of discretion is made." (*In re Marriage of Frick* (1986) 181 Cal.App.3d 997, 1022; see *In re Marriage of Huntington* (1992) 10 Cal.App.4th 1513, 1523.) ""In the absence of a clear showing of abuse, its determination will not be disturbed on appeal." [Citation.] Thus, we affirm the court's order unless ""no judge could reasonably make the order made. [Citations.]"" [Citation.]" (*In re Marriage of Dietz* (2009) 176 Cal.App.4th 387, 406; *In re Marriage of McTiernan & Dubrow* (2005) 133 Cal.App.4th 1090, 1110.)

In ruling on a request for attorneys' fees and costs, the trial court must consider "whether there is a disparity in access to funds to retain legal counsel, and whether one party is able to pay for legal representation of both parties." (Fam. Code, § 2030, subd. (a)(2).) The trial court must decide ""what is just and reasonable under the relative circumstances" [citation], taking into consideration "the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately . . . ."" (*In re Marriage of Dietz, supra*, 176 Cal.App.4th at

p. 406; see also Fam. Code, § 2030, subd. (a)(1).) In assessing need and ability to pay, “the court may take into account “all evidence concerning the parties’ current incomes, assets, and abilities . . . .”” (*In re Marriage of Dietz, supra*, at p. 406.)

In explaining the basis for its decision to require Christopher to pay Erin’s attorneys’ fees, the trial court engaged in a thorough analysis of the relevant factors and circumstances, including Christopher’s decreased income and standard of living, his payment of his attorneys’ fees, and Erin’s “stubborn refusal” to obtain employment. Because the trial court considered all of the relevant circumstances in making the attorneys’ fees order, and the order was not one that no judge could reasonably make, the trial court did not abuse its discretion by ordering Christopher to pay Erin’s attorneys’ fees. (See *In re Marriage of Dietz, supra*, 176 Cal.App.4th at p. 406; *Alan S. v. Superior Court, supra*, 172 Cal.App.4th at p. 242.)

Christopher also complains that the trial court continues to hold him responsible for paying Erin’s former attorney, Lynn Soodik, one-half of the proceeds from the sale of a Corvette, even though Christopher believes he “has proven that he followed Court order and gave this amount to [Erin]. [Christopher] further provided the trial Court a copy of the order, which required him to *pay to [Erin], not to her attorneys*, although the trial Court ignored this evidence upon Reconsideration.”

The judgment recites that the trial court ordered the parties to sell the Corvette “and disburse the proceeds to the attorneys up to \$20,000 each.” Erin’s former attorney should have received \$14,000 from the proceeds. The judgment states that “unless [Christopher] has already paid this sum to Lynn Soodik and can provide proof thereof to the court by 03/01/2011, Lynn Soodik is awarded as against [Christopher] the sum of \$14,000 plus interest . . . .” Pursuant to the judgment, Christopher had the opportunity to prove to the trial court that he had paid the \$14,000. If the order required Christopher to pay Erin, not Lynn Soodik directly, Christopher had the opportunity to request that the court correct the judgment. (See Code Civ. Proc., § 473, subd. (d); *In re Marriage of Sheridan, supra*, 140 Cal.App.3d at p. 746; *In re Marriage of Kaufman, supra*, 101 Cal.App.3d at p. 151.) Christopher has not demonstrated that there was any error in the

judgment, and we do not have jurisdiction to consider matters occurring after the judgment. (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 706.)

## **9. Spousal Support**

The trial court awarded Erin spousal support of \$2,245 per month “until the death or remarriage of [Erin], or until further order of this court. This order takes into consideration [Erin’s] current reasonable needs [of] \$5,245 per month” and “an imputed earning capability” of \$3,000 per month.

Christopher contends the trial court abused its discretion in awarding Erin spousal support, “even though [Erin] was responsible for the parties’ separation and subsequent divorce,” breached her fiduciary duty, “violated the marital contract through infidelity, caused excessive and protracted litigation throughout the proceedings, namely by falsely accusing [him] of abuse that she never substantiated, and consistently tried to interfere with [his] employment.” These complaints, to the extent they are different than Christopher’s other arguments, are not grounds for reversing a spousal support order. Infidelity and responsibility for the divorce are irrelevant to the issue of spousal support. (See *Diosdado v. Diosdado* (2002) 97 Cal.App.4th 470, 474 [“Fault is simply not a relevant consideration in the legal process by which marriage is dissolved.”]; *In re Marriage of Leib* (1978) 80 Cal.App.3d 629, 636, fn. 4 [Family Law Act “eliminates reference to the notion of fault as a factor to be considered in effecting economic justice between parties upon dissolution of marriage.”]; *In re Marriage of Rosan* (1972) 24 Cal.App.3d 885, 892 [Family Law Act eliminated “the consideration of the comparative marital fault of the parties and the ‘concept of granting support to the “innocent” or against the “guilty.””].)<sup>7</sup> Moreover, the trial court found that Christopher bore more responsibility than Erin did for the “excessive and protracted litigation” in this case.

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<sup>7</sup> “Effective January 1, 1994, Family Code section 300 et seq. superseded the Family Law Act without substantive change.” (*In re Marriage of Cantarella* (2011) 191 Cal.App.4th 916, 919, fn. 1.)

The trial court considered the relevant factors, including the length of the marriage (15 years), the age of the parties' children (9 and 6 years old at the time of the order), the decrease in the parties' lifestyles since separation, and the distribution of the parties' assets. The trial court also considered the parties' earning capacities, including Christopher's decreased income for various reasons (including his 50 percent custody of the children), and Erin's need for retraining in order to have marketable skills. The court noted that Christopher's "marketable skills . . . have been well established due to his long track record of success as an entertainer." The court found from the evidence that Erin "could work if she wanted to based on the market for her skills and availability of work," but because she could not work "at a level of the marital standard," the court found that this factor weighed in favor of an award of spousal support. The court also found weighing in support of a spousal support award was that Erin's "domestic duties" of being "nearly exclusively in charge of the household and the children as well as the business and personal management and expenditures of the household," had a "significant impact on [her] ability to earn at this time due to absence from the labor force and loss of employment skills." On the other hand, the court found that Erin's refusal "to take responsibility for her financial future by failing to obtain remunerative employment," and her "failure and refusal to work and earn income," was "a factor against an award of spousal support." The court found that if Erin were to "undertake the necessary training, she could offset her needs by \$3,000 per month, but would never be able to live to the marital standard."

"Spousal support is governed by statute. [Citation.] In ordering spousal support, the trial court *must* consider and weigh all of the circumstances enumerated in [Family Code section 4320], to the extent they are relevant to the case before it. [Citations.] The first of the enumerated circumstances, the marital standard of living, is relevant as a reference point against which the other statutory factors are to be weighed. [Citations.] The other statutory factors include: contributions to the supporting spouse's education, training, or career; the supporting spouse's ability to pay; the needs of each party, based on the marital standard of living; the obligations and assets of each

party; the duration of the marriage; the opportunity for employment without undue interference with the children's interests; the age and health of the parties; tax consequences; the balance of hardships to the parties; the goal that the supported party be self-supporting within a reasonable period of time; and any other factors deemed just and equitable by the court. [Citation.]' [Citation.] The trial court has broad discretion in balancing the applicable statutory factors and determining the appropriate weight to accord to each, but it may not be arbitrary and must both recognize and apply each applicable factor. [Citation.] Once it does, 'the ultimate decision as to amount and duration of spousal support rests within its broad discretion and will not be reversed on appeal absent an abuse of that discretion. [Citation.]' [Citation.] "Because trial courts have such broad discretion, appellate courts must act with cautious judicial restraint in reviewing these orders." [Citation.]' [Citation.]" (*In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 207.)

Christopher asks that we "require the trial court to consider the fact that [Erin] has refused to seek gainful employment or retraining for the past 6 years and adjust the term of spousal support downwardly." The trial court, however, considered this fact, as well as the "goal that the supported party shall be self-supporting within a reasonable period of time," and that the law entitles a "spouse to dissolution support for only so long as necessary to become self-supporting." (*In re Marriage of Pendleton & Fireman* (2000) 24 Cal.4th 39, 53, quoting Fam. Code, § 4320, former subd. (k) [current subd. (l)].) The trial court balanced this goal of encouraging Erin to become self-sufficient with the factors favoring continued support, e.g., the length of the marriage, the marital standard of living, and Christopher's superior earning capacity. The trial court also imputed to Erin \$3,000 in monthly income based on her earning capacity.<sup>8</sup> (See *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 642 ["It has long been the rule in this state that a parent's

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<sup>8</sup> Neither Christopher nor Erin challenges this amount, nor does either one argue that this amount is not supported by substantial evidence. (See *In re Marriage of Berger* (2009) 170 Cal.App.4th 1070, 1079.)

earning capacity may be considered in determining spousal and child support.”]; *In re Marriage of Ackerman*, *supra*, 146 Cal.App.4th at p. 211 [“The law is established ‘that a trial court may consider earning capacity in determining spousal support . . . .’”].) The fact that the spousal support award is not sufficient to meet Erin’s needs serves as an incentive for Erin to obtain the retraining she needs and to take steps toward becoming self-supporting.

Finally, the trial court retained jurisdiction and has broad discretion to modify the award should there be a change in circumstances, such as Erin obtaining employment or her continued and unreasonable refusal to seek employment. As the Supreme Court stated in *In re Marriage of Morrison* (1978) 20 Cal.3d 437: “Where jurisdiction has been retained in the original order, future modification hearings may well reveal that the supported spouse has found adequate employment, has delayed seeking employment, or has refused available employment. At that time, the court may appropriately consider such factors in deciding whether or not to modify its original order.” (*Id.* at p. 453; see *In re Marriage of Tydlaska* (2003) 114 Cal.App.4th 572, 575 [“Modification of a spousal support order may be made . . . on a showing of a material change in circumstances after the last order.”]; *In re Marriage of Berland* (1989) 215 Cal.App.3d 1257, 1263-1264 [the trial court did not abuse discretion in reducing spousal support where the supported spouse “had not diligently pursued gainful employment.”]; *In re Marriage of Sheridan*, *supra*, 140 Cal.App.3d at p. 749 [A “court may deny an application for increased spousal support” on basis that the supported spouse “had done little to prepare herself for or to seek gainful employment.”].) A supported spouse “cannot make unwise decisions which have the effect of preventing him or her from becoming self-supporting and expect the supporting spouse to pick up the tab.” (*In re Marriage of Schafter* (1999) 69 Cal.App.4th 801, 812.) The trial court can address any such issues if they arise in the future.

The trial court carefully analyzed all of the relevant factors in making its award. The trial court did not abuse its discretion. (See *In re Marriage of Ackerman*, *supra*, 146 Cal.App.4th at p. 207 [““Because trial courts have such broad discretion, appellate courts must act with cautious judicial restraint in reviewing [spousal support]

orders.”””]; *In re Marriage of Geraci* (2006) 144 Cal.App.4th 1278, 1297, 1299; *In re Marriage of Nelson* (2006) 139 Cal.App.4th 1546, 1559-1560.)

#### **10. Reimbursement of Retirement Funds**

Christopher contends the trial court failed to reimburse him for retirement funds that Erin withdrew from an account in 2007 in violation of a court order. The trial court found that Christopher had failed to prove that he was entitled to reimbursement for these funds. The trial court acknowledged that Erin’s “means of obtain[ing] the funds was inappropriate and misguided but was done after the judgment granting her the retirement account.”

Christopher argues that the trial court mistakenly referred to a 2009 withdrawal of funds from the account, and ignored the 2007 improper withdrawal. The evidence he cites in support of his argument, however, was evidence he submitted in support of his motion for reconsideration, which, as noted above, the trial court properly refused to consider.

#### **11. Reimbursement for Breach of Fiduciary Duty**

Christopher argues that the trial court erred in finding that Erin did not breach her fiduciary duties by misappropriating money from Christopher’s personal and business accounts. The trial court found that Erin “was expressly or impliedly authorized to write [checks on these accounts] and sign [Christopher’s] name and that [Erin] used these funds for community purposes, that there is no evidence of misappropriation of these funds, and that [Christopher] has failed to prove any claim of breach of fiduciary duty.” The trial court found that at the time Erin had the responsibility for doing the bookkeeping and paying the bills for both personal and business accounts. There was conflicting testimony from Christopher and Erin as to whether Christopher had authorized Erin to sign checks on the business account, and there was no documentation or witness testimony to support either party’s testimony. There was evidence that Erin had signed her name to checks she wrote on Christopher’s business account.

The trial court found that Christopher “was on ‘the road’ doing his comedy act in distant and remote locations (and therefore could not sign checks or make deposits himself), and [that Erin] was in charge of paying the community bills and [the business’s] bills as well, it became a custom and practice in the marriage for [Erin] to sign [Christopher’s] name to checks for deposit and to pay for bills of [the business] and the home. [Christopher] clearly knew about this and authorized this; otherwise, the income received in the form of checks and bills for [the business] and the household would never be paid. [Christopher] weakly admitted as much when he stated that the ‘horse was out of the barn’ and [Erin] just continued to write the checks and he never did anything to prevent it.” The trial court also found that the evidence showed “that the parties did not respect the corporate shell” and paid business and personal bills from both accounts. While Christopher objected to Erin’s signing checks on the business account to pay personal bills, he “never undertook to transfer funds or pay bills himself or take other steps to change the procedure.” The trial court found that by doing so, Christopher ratified Erin’s actions, and that Christopher’s “testimony to the contrary is not credible.”

On appeal, Christopher relies on the evidence he presented (or attempted to present in his motion for reconsideration) supporting his claim of misappropriation. Christopher, however, has not demonstrated error. The trial court noted that there was conflicting evidence, including testimony by Christopher that the court found was not credible, and it believed Erin over Christopher. As noted above, when an appellant challenges the trial court’s factual findings, we defer to the trial court’s determination of credibility. (*In re Marriage of Balcof, supra*, 141 Cal.App.4th at p. 1531; *In re Marriage of Calcaterra & Badakhsh, supra*, 132 Cal.App.4th at p. 34.) We view the evidence in the light most favorable to the prevailing party and resolve all evidentiary conflicts and draw all reasonable inferences in support of the trial court’s findings. (*In re Marriage of Mix, supra*, 14 Cal.3d at p. 614.) Moreover, by citing only to his evidence and not to the contrary evidence credited by the trial court, Christopher has not met his burden of demonstrating that the trial court’s findings on Christopher’s breach

of fiduciary duty claim are not supported by substantial evidence. (See *In re Marriage of Rothrock*, *supra*, 159 Cal.App.4th at p. 230; *In re Marriage of Nichols*, *supra*, 27 Cal.App.4th at pp. 672-673, fn. 3; *In re Marriage of Schroeder*, *supra*, 192 Cal.App.3d at p. 1164.)

### **DISPOSITION**

The judgment is affirmed. Erin is to recover her costs on appeal.

SEGAL, J.\*

We concur:

WOODS, Acting P. J.

ZELON, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.